

## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

MAR 22 2007

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF  
THE CITY OF PHOENIX, ARIZONA TO  
UPGRADE A CROSSING OF THE UNION  
PACIFIC RAILROAD AT 67<sup>TH</sup> AVENUE IN  
MARICOPA COUNTY, ARIZONA, AAR/DOT NO.  
741-809-T

DOCKET NO. RR-03639A-06-0793

DECISION NO. 69383OPINION AND ORDER

DATE OF HEARING:

February 1, 2007

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

Mr. Charles Hains, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission

**BY THE COMMISSION:**

On December 19, 2006, the City of Phoenix, Arizona ("City") filed with the Arizona Corporation Commission ("Commission") a request for approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing at 67<sup>th</sup> Avenue in Phoenix, Maricopa County, Arizona at AAR/DOT 741-809-T.

On January 4, 2007, by Procedural Order, the Application was set for a hearing and the City was ordered to notify any interested party of the Application and the hearing. In accordance with the law, notice was provided to all interested parties.

On February 1, 2007, a full public hearing was held before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's Railroad Safety Section was present with counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a recommended Opinion and Order to the Commission.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the

1 Commission finds, concludes, and orders that:

2 **FINDINGS OF FACT**

3 1. On December 19, 2006, the City filed an Application in which it requested an Opinion  
4 and Order from the Commission approving an agreement between the City and the Railroad to  
5 upgrade the existing 67<sup>th</sup> Avenue public crossing between Van Buren Street and Buckeye Road in  
6 Phoenix, at AAR/DOT No. 741-809-T in the following manner: by widening the existing roadway  
7 from one lane in each direction to two lanes in each direction with a turning lane; by constructing  
8 raised concrete medians; by replacing the existing warning devices with new 12-inch LED automatic  
9 warning devices with automatic double gates; and by installing a new concrete crossing surface.

10 2. The City and all interested parties have been provided with notice of the Application  
11 and hearing thereon.

12 3. A hearing was held as scheduled on February 1, 2007.

13 4. The Application provides for the widening of the roadway at the crossing with the  
14 Railroad installing new LED flashing lights with opposing automatic double gates, and a new  
15 crossing surface.

16 5. Staff testified that the cost apportionment for the installation of the crossing upgrade  
17 as provided in the Application is proper and approximately \$440,000 will be paid by the City.

18 6. Staff has recommended that the Application be approved.

19 **CONCLUSIONS OF LAW**

20 1. The Commission has jurisdiction over the parties and over the subject matter of the  
21 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
22 40-337.01.

23 2. Notice of the Application was provided in accordance with the law.

24 3. Installation of the crossing upgrade is necessary for the public's convenience and  
25 safety.

26 4. Pursuant to A.R.S. §§ 40-336 and 337, the Application should be approved as  
27 recommended by Staff.

1           5.     After installation of the crossing, the Railroad should maintain the crossing in  
2 accordance with A.A.C. R-14-5-104.

3                                 ORDER

4           IT IS THEREFORE ORDERED that the City of Phoenix's Application is hereby approved.

5           IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the  
6 crossing upgrade as described in the Application within fifteen months from the effective date of this  
7 Decision.

8           IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the  
9 Commission, in writing, within ten days of both the commencement and the completion of the  
10 crossing upgrade, pursuant to A.A.C. R14-5-104.

11 ...

12 ...

13 ...

14 ...

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific Railroad Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 22<sup>nd</sup> day of March, 2007.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD

2 DOCKET NO.: RR-03639A-06-0793

3

4 John Syers  
5 Railroad Engineering Coordinator  
6 Arizona Department of Transportation  
7 205 S. 17<sup>th</sup> Avenue, Mail Drop 618E  
8 Phoenix, AZ 85007

6

7 David Gibson  
8 Arizona Department of Transportation  
9 Traffic Records Section  
10 206 S. 17<sup>th</sup> Avenue, Mail Drop 064R  
11 Phoenix, AZ 85007

9

10 James H. Smith  
11 UNION PACIFIC RAILROAD COMPANY  
12 10031 Foothills Blvd.  
13 Roseville, CA 95747

12 Thomas Fisher  
13 Belinda Cummings  
14 Engineering & Architectural Services Department  
15 200 West Washington Street, 7<sup>th</sup> Floor  
16 Phoenix, Arizona 85003

15 Christopher Kempley, Chief Counsel  
16 Legal Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

18 Brian Lehman  
19 Chief Railroad Safety Section  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington Street  
22 Phoenix, Arizona 85007

21

22

23

24

25

26

27

28